

U.S. Serial No.: 09/837,526

**In The Drawings:**

Please amend the drawings by amending Figure 3 as provided on the attached drawing sheets. The attached drawing sheets have been labeled "Replacement Sheet".

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**REMARKS****I. Introduction**

Claims 1, 3 and 5-10 are pending in the above application.

Claims 3, 5 and 7 stand rejected under 35 U.S.C. § 112 ¶ 1.

Claims 1, 3, 5-6 and 8-10 stand rejected under 35 U.S.C. § 102.

Claim 7 stands rejected under 35 U.S.C. § 103.

Claims 1, 9 and 10 are independent claims.

**II. Amendments**

Figure 3 has been amended to avoid using the same reference number on different components.

Claims 1, 3 and 5-7 have been amended to more particularly and distinctly point out that which applicant regards as the invention therein.

Claims 2 and 4 have been cancelled without prejudice or disclaimer.

No new matter has been added.

**III. Rejection Under 35 U.S.C. § 112 ¶ 2**

Claims 3, 5 and 7 stand rejected under 35 U.S.C. § 112 ¶ 1 as allegedly being indefinite. The language of claims 3, 5 and 7 which has been identified as being indefinite has been amended. Claims 3, 5 and 7, as amended, are believed to be sufficiently definite within the meaning of the 35 U.S.C. § 112, ¶ 2. Accordingly, withdrawal of the above rejection is respectfully submitted.

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#### IV. Rejections Under Prior Art

A. Claims 1, 3-6 and 8-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Vogel et al. (U.S. Pat. 6,804,262).

Anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed in a prior art reference as arranged in the claim. See, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986); and *Connell v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983).

Vogel does not disclose a method for locating a desired channel in a downstream signal which includes scanning the downstream signal at a first scanning bandwidth in a power spectrum scan to identify power containing regions in the downstream signal; scanning the identified power containing regions in the downstream signal at a second scanning bandwidth with a spectrum scan; and identifying potential desired channels based on the spectrum scan and generating a constructed channel response, as recited by amended claim 1. Vogel merely discloses to use narrow band-pass filter 116 perform a power measurement in a narrow bandwidth at predetermined locations on the frequency spectrum, e.g. at  $F_A$  and  $F_B$ . Figs. 3, 4, 5, 6 and 7; col. 9: 43 – col. 10: 48; col. 12: 57 – col. 13: 20. Vogel does not perform a power spectrum scan at a first bandwidth and then, using a narrower bandwidth, perform a spectrum scan on the power containing regions identified by the power spectrum scan. While the Office action points to the operation in Figure 7, Vogel makes it clear that the wider bandwidth filter is only used after the narrow bandwidth filter, and then is only used to confirm whether or not channels found by the narrow bandwidth filter are active. Fig. 7, steps 310, 312; col. 15: 5-23.

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Accordingly, as Vogel does not disclose each and every limitation of amended claim 1, Vogel does not anticipate amended claim 1, nor claims 3, 5, 6 and 8 which depend on amended claim 1.

Furthermore, Vogel also does not disclose to use a single filter for both a power spectrum scan and a spectrum scan, with the spectrum scan being at a narrower bandwidth, as required by amended claims 5 and 6.

Regarding claim 9, Vogel does not disclose a coarse power spectrum scan to identify power containing regions, and then a finer power spectrum scan on the identified power containing regions. As discussed above, Vogel uses a narrow bandwidth for an initial scan and only uses a wide bandwidth, if at all, after the using the narrow bandwidth. Accordingly, as Vogel does not disclose each and every limitation of claim 9, Vogel does not anticipate claim 9.

Regarding claim 10, Vogel does not disclose a method for locating a desired channel in a downstream signal which includes performing a Fourier analysis on the power containing regions of the downstream signal. The reliance on col. 14: 5-37 of Vogel in the Office action is misplaced. Vogel does not disclose performing a Fourier analysis at all, let alone on identified power containing regions to generate a constructed channel response. Accordingly, as Vogel does not disclose each and every limitation of claim 10, Vogel does not anticipate claim 10.

B. Claim 7 stands rejected under 35 U.S.C. § 103 as being unpatentable over Vogel in view of Dowling (U.S. Pub. 2001/0055328).

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Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *Ecolochem Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 56 U.S.P.Q.2d (BNA) 1065 (Fed. Cir. 2000); *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2D (BNA) 1614, 1617 (Fed. Cir. 1999); *In re Jones*, 958 F.2d 347, 21 U.S.P.Q.2d 1941 (Fed. Cir. 1992); and *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). See also MPEP 2143.01.

Neither Vogel nor Dowling, taken alone or in combination, disclose or suggest a method for locating a desired channel in a downstream signal which includes scanning the downstream signal at a first scanning bandwidth in a power spectrum scan to identify power containing regions in the downstream signal; scanning the identified power containing regions in the downstream signal at a second scanning bandwidth with a spectrum scan; and identifying potential desired channels based on the spectrum scan and generating a constructed channel response, as recited by amended claim 1. Vogel does not disclose such as discussed above. Dowling also does not disclose such. Dowling discloses to use an FFT on sample channel values for a roaming mobile station 10 to allow the roaming unit to determine if a particular obtained channel is suitable. The Office action relies on Dowling for its use of an FFT, Dowling does not cure the deficiencies of Vogel with regard to at least amended claim 1, upon which claim 7 depends and incorporates all of the limitations thereof.

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Accordingly, as neither Vogel nor Dowling, taken alone or in combination, disclose or suggest all of the limitation of claim 7/1, the combination of Vogel and Dowling does not render claim 7 unpatentable.

#### V. Conclusion

Having fully responded to the Office action, the application is believed to be in condition for allowance. Should any issues arise that prevent early allowance of the above application, the examiner is invited contact the undersigned to resolve such issues.

To the extent an extension of time is needed for consideration of this response, Applicant hereby request such extension and, the Commissioner is hereby authorized to charge deposit account number 502117 for any fees associated therewith.

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Respectfully submitted,

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